



NEW AMERICA
FOUNDATION

July 18, 2013

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Notice of Oral *Ex Parte* Presentation

Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, GN Docket No. 12-268;

Policies Regarding Mobile Spectrum Holdings, GN Docket No. 12-269;

Commercial Operations in the 3550-3650 MHz Band, GN Docket No. 12-354

Dear Ms. Dortch:

On July 16, 2013, Michael Calabrese of the New America Foundation, Harold Feld of Public Knowledge, and Delara Derakhshani of Consumers Union met with Louis Peraertz, Legal Advisor to Acting Chairwoman Mignon Clyburn, on behalf of the groups affiliated with the Public Interest Spectrum Coalition (PISC) that filed jointly in the proceedings referenced above.

With respect to the incentive auctions proceeding, the public interest representatives emphasized that the public interest is best served by band plan, auction and repacking policies that strike a balance between broadcast stations, licensed mobile operators *and facilitating robust unlicensed nationwide* within statutory constraints. In addition to last year's Spectrum Act, we urged the Commission to be mindful of the statutory obligations that apply to auction design and license assignments: First, Section 309(j)(3), by which Congress established that competition and innovation are primary auction objectives; and second, Section 309(j)(7), by which Congress explicitly prohibits basing a public interest finding on the expectation of federal revenue.

We outlined the three primary policies identified in PISC's comments – and in the comments of the cable and WISP industries, among others, to ensure a sufficient amount of unlicensed access (30 MHz or more) in *every* market that will be necessary to promote and sustain national markets for unlicensed chips, devices and services:

- Designation of an unlicensed and *contiguous* duplex gap (and/or guard band) of at least 20 MHz.
- Preserving and opening the current two channels designated for wireless microphone reservations for shared unlicensed use – and requiring microphones to rely first on out-of-market TV co-channels.
- The opening of Channel 37 for unlicensed access subject to TV Bands Database-enforced exclusion areas for astronomy and WMTS.

The public interest advocates reiterated their support for a generally *uniform* band plan that optimizes – but is limited to – paired spectrum useful to competitive carriers. Market variation was never suggested during legislative process and should not undermine the viability of the unlicensed economy to create additional unpaired Supplemental Downlink that would be useful only to the two dominant wireless carriers. The groups also note that at a minimum there should be no variable spectrum assigned below Channel 37.

The PISC representatives also proposed that post-auction, large portions of 600 MHz band spectrum will remain unused in large portions of the country for many years – and many rural and small town areas may not be built out even at the end of the initial license term. PISC’s comments therefore proposed that all new 600 MHz licenses should include a condition that permits unlicensed white space devices to operate on a localized basis until such time as the licensee notifies the Commission and a TVDB administrator that the licensee intends to commence service. This maintains the status quo, since under current rules unoccupied 600 MHz spectrum does not lie fallow but can be *used* for broadband services, subject to automatic protections for incumbents that is enforced by the TV Bands Database (TVDB). Licensees lose no rights whatsoever and bear a *de minimus* burden to simply inform the Commission and/or one TVDB administrator 30 days prior to commencing substantial service in a particular local area, so that all unlicensed devices can be immediately denied permission to operate on that frequency band.

The public interest representatives further noted that repacking and relocation will have an enormous impact on the future of the unlicensed economy. We asserted that repacking should be carried out with a goal of optimizing the usefulness of unlicensed TV band spectrum for rural broadband and other higher-power applications, since under current rules it requires three consecutive White Space channels for WISPs and others to provide fixed wireless service. We further recommended that the Commission adopt a policy of vigorously enforcing its rules to ensure that LPTV, translator and booster stations that are not entitled to interference protection also do not have protected status in the TV Bands Database. While many LPTV stations serve the public interest and enhance diversity, too many are not operating or occupying far more spectrum than needed for a single digital stream of content. We noted that PISC, in its comments, recommended that the Commission consider requiring secondary broadcast licensees

to co-locate and share a single 6 MHz channel where feasible without reducing their free over-the-air broadcast service to the community.

Finally, with respect to 600 MHz auctions, the PISC representatives expressed their support for the adoption of a sub-1 GHz spectrum holdings limit a pre-auction rule of general applicability. Low frequency spectrum is uniquely valuable, particularly for entrants and competitive carriers, with an enormous foreclosure value to the two dominant carriers that already hold 80% of the available CMRS spectrum below 1 GHz. We encouraged Acting Chairwoman Clyburn to move ahead to complete the general proceeding on aggregation limits prior to 600 MHz auction rules and to include a sub-1 GHz limit.

With respect to the 3.5 MHz band proceeding, the group reiterated PISC's support for the "Citizen's Broadband Service" concept generally as proposed in the NPRM. More small cell band sharing is the most pro-consumer means of meeting exploding mobile data demand. We reiterated the strong support in PISC's comments and reply comments for the proposed 3-tier access model for federal spectrum sharing based on last year's PCAST recommendations. Most critically, the Commission's proposed 3-tier model – governed by a neutral Database mechanism (Spectrum Access System) – provides a framework for sharing additional Federal bands beyond 3.5 GHz. PISC advocates that a majority of 3550-3700 MHz band should be available for General Authorized Access (GAA) to ensure markets of national scope and avoid the fragmentation and big city availability problems that undermine the utility of TV White Spaces. Conversely, only a portion of the band, such as the 50 MHz total proposed in the NPRM, should initially be designated for exclusive secondary licensing (Priority Access) that would preclude a substantial and certain new allocation of unlicensed spectrum.

Respectfully submitted,

/s/

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